

**DECISION**



*120013*  
*12/1/82*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-208215.2

**DATE:** November 30, 1982

**MATTER OF:** El Greco Painting and General  
Contractors Company, Inc.

**DIGEST:**

Where the contracting agency does not receive an acknowledgment of a material amendment to the solicitation, the fact that the bidder mailed the acknowledgment is not sufficient to constitute an express acknowledgment. The bidder has the responsibility to assure that the acknowledgment arrives at the agency, and the failure to do so requires the rejection of its bid as nonresponsive.

El Greco Painting and General Contractors Company, Inc. (El Greco), protests the rejection of its bid as nonresponsive for failure to acknowledge a material amendment to invitation for bids (IFB) No. DTCG39-82-B-00577, issued by the United States Coast Guard Academy (Coast Guard), New London, Connecticut.

We deny the protest.

The IFB solicited bids for the installation of a new four-ply roofing system for Roland Hall and a new built-up roofing system for Johnson Hall. Prior to the scheduled bid opening of June 28, 1982, the Coast Guard issued 2 amendments. Amendment No. 0001 changed the description of work for both Johnson and Roland Halls by requiring a new ballasted single-ply roofing system for each building. Amendment No. 0002 once again changed the description of work for Johnson Hall, but left the work to be done on Roland Hall as specified in amendment No. 0001.

By the 3:15 p.m. bid opening on June 28, the Coast Guard had received eight bids, but El Greco's bid was not among them. On July 1, 1982, the Coast Guard received a bid from El Greco which had been sent via certified mail and was postmarked June 23, 1982. Upon opening the bid, the Coast Guard discovered that it was the lowest bid received. However, the Coast Guard also discovered that El Greco had not

acknowledged either of the two amendments. Therefore, by letter of July 8, 1982, the Coast Guard notified El Greco that its bid was rejected for its failure to acknowledge the amendments. Then, on July 12, 1982, the Coast Guard received a second piece of certified mail from El Greco which contained signed copies of amendment No. 0002. This envelope was also postmarked June 23, 1982.

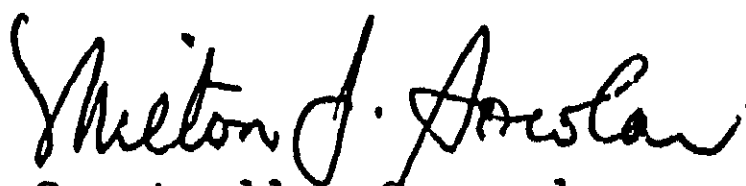
Under the IFB's late bid clause, El Greco's bid and its acknowledgment of amendment No. 0002, although received after bid opening, could properly be accepted since they were sent by certified mail "not later than the fifth calendar day prior to the date specified for the receipt of bids." However, the Coast Guard never received any acknowledgment from El Greco for amendment No. 0001 or was otherwise able to determine from the bid that El Greco could be held legally bound to meet the requirements of amendment No. 0001 if awarded the contract. Although El Greco argued that it had sent a letter acknowledging amendment No. 0001 and presented a "Certificate of Mailing" (not a receipt for certified mail) dated June 23, 1982, indicating that El Greco sent one piece of ordinary mail to the Coast Guard Academy on that day, the Coast Guard concluded that this was not sufficient evidence that El Greco had acknowledged amendment No. 0001 and confirmed its earlier decision that El Greco's bid was nonresponsive.

Our Office has held that the failure to acknowledge an amendment to a solicitation which materially affects the IFB requires rejection of the bid as nonresponsive and may not be waived as a minor informality. Western Microfil Systems/Lithographics, B-196649, January 9, 1980, 80-1 CPD 27. The basis for this rule is that the acceptance of a bid which disregards a material provision of an invitation, as amended, would be prejudicial to the other bidders--in other words, clarification of the bid after opening may not be allowed because the bidder in such circumstances has the option of deciding to become eligible by furnishing extraneous evidence that the amendment had been considered or to avoid the award by remaining silent. Fil-Coil Company, Inc., B-197604, March 25, 1980, 80-1 CPD 221.

In our opinion, amendment No. 0001 was a material amendment. It changed the requirement for Roland Hall from a new four-ply roofing system to a new ballasted single-ply roofing system. El Greco could not be held legally bound to meet this requirement unless it acknowledged amendment No. 0001. The Coast Guard, however, never received any acknowledgment, and El Greco's only proof that it acknowledged the amendment is a "Certificate of Mailing" for an

unidentified piece of ordinary mail. Under our prior decisions and the IFB's late bid clause, this is not sufficient evidence that El Greco intended to be bound by the requirements of amendment No. 0001. Moreover, we have held that the bidder has the responsibility to assure that its acknowledgment arrives at the agency. See United States Cartridge Company, B-200481, February 11, 1981, 81-1 CPD 94. We conclude, therefore, the Coast Guard properly rejected El Greco's bid as nonresponsive.

Protest denied.

*for*   
Comptroller General  
of the United States